

837TGOLC Conference

1 UNITED STATES DISTRICT COURT  
1 SOUTHERN DISTRICT OF NEW YORK

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3 HYL A GOLD, Individually and on  
3 behalf of all others similarly  
4 situated as class  
4 representative,

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5 Plaintiff,

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6 v. 07 CV 8204 (DLC)

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7 CLEAR CHANNEL COMMUNICATIONS,  
8 INC. and CLEAR CHANNEL OUTDOOR  
8 HOLDINGS, INC.,

9

9 Defendants.

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11 New York, N.Y.

11 March 7, 2008

12 10:00 a.m.

12

13 Before:

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14 HON. DENISE L. COTE,

14

15 District Judge

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16 APPEARANCES (Telephonic)

16

17 OUTTEN & GOLDEN

17 Attorneys for Plaintiff

18 BY: PIPER HOFFMAN

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19 MORGAN, LEWIS & BOCKIUS

19 Attorneys for Defendants

20 BY: CHRISTOPHER PARLOW

20 MICHAEL PUMA

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1 But Mr. Parlow, am I correct, defendants have not  
2 agreed to provide any contact information?

3 MR. PARLOW: Your Honor, don't want to jump in unless  
4 it's okay to.

5 THE COURT: Okay. Well, so Ms. Hoffman, great. So  
6 instead where we are is that you want a sampling for contact  
7 information and log in, log out information?

8 MS. HOFFMAN: We agreed with defendant to accept a  
9 sampling of log in, log out information. We would like contact  
10 information for the entire putative class.

11 THE COURT: Okay. Mr. Parlow?

12 MR. PARLOW: Your Honor, in order to have settlement  
13 discussions and have them be productive we have agreed to  
14 provide a sampling of the log in, log out data for the 81  
15 people who we have identified as being within the national  
16 account executive category, and that includes not only people  
17 with a certain title but anyone who over a six-year period for  
18 New York purposes and a three-year period for FLSA purposes had  
19 any title in which any portion of their duties and  
20 responsibilities involved national account functions. So we  
21 tried to be overly inclusive even though all those people might  
22 not at the end of the day fall squarely within that category.

23 THE COURT: Now Mr. Parlow, I didn't hear one word  
24 that you said or the phrase. You said you're providing this  
25 data for national account executives not simply for those who

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1 bore what title?

2 MR. PARLOW: That title, title of national account  
3 executive, because there are six or seven different titles  
4 across the country and different markets. And so we didn't  
5 want to just look at someone who was semantically labeled  
6 national account executive. So there are six or seven other  
7 titles within which individuals might perform some of those  
8 national account duties, and we have included those within the  
9 81 people in a chart that has an identifier for the person, at  
10 plaintiff's request, the hire date, the termination date, all  
11 of the compensation information for that person or those  
12 persons for a six-year period and their title, and that's where  
13 the plaintiffs will be able to see the titles are all  
14 different.

15 We also agreed, in addition to all that information,  
16 to produce log in, log out data on a sample basis because it's  
17 very hard to collect. And unilaterally we don't think it's  
18 that helpful, but we wanted plaintiffs to be able to look at it  
19 and to reach their own conclusions as to whether the burden of  
20 sample data for more of the 81 people would be warranted.

21 We have also agreed -- and Ms. Hoffman is correct, we  
22 haven't offered contact information for all 81 people.

23 THE COURT: You have or haven't?

24 MR. PARLOW: Have not. But what we offered is after  
25 plaintiffs reviewed the chart and could look at the diversity

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1 that if they wanted further information regarding those people  
2 we would work to get that. We also offered 30(b)(6)  
3 depositions so they can analyze the data in the chart and talk  
4 about hours and duties. And we didn't get there, but I also  
5 don't have a problem with once they reviewed the chart, taken  
6 the 30(b)(6) depositions, if they believed they needed to speak  
7 to one or more of the individuals within the 81 then I think it  
8 would be appropriate if they wanted to do so.

9 But our objection is to anything regarding the local  
10 account executives who we had never believed were part of the  
11 class, and from the first moment of settlement discussions I  
12 told plaintiff's counsel we will not discuss them. We have no  
13 interest in local account executives being part of the  
14 settlement. We will litigate that. No Court or agency has  
15 ever held that any local account executives who sell  
16 advertising space are not exempt. So we believe this entire  
17 process was to be focused on the 81 people we described in our  
18 first conference with you.

19 And so we're at loggerheads over the attempt to expand  
20 it. And if it is going to be expanded then we would not be  
21 engaging in settlement discussions.

22 THE COURT: Okay. Now let me understand, Mr. Parlow,  
23 then I will of course give you, Ms. Hoffman, an opportunity to  
24 be heard. The 81, as far as you're concerned, is not a sample  
25 of the national account executives but instead all of the